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SUPREME COURT, U.S.

No. 81-2318

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

STATE OF FLORIDA,

Petitioner,

-vs-

CONSTANTINO CASAL and
OMAR GARCIA,

Respondents.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA; ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

BRIEF IN OPPOSITION

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PETITION UNTIMELY FILED

The Petition for Writ of Certiorari filed by the State of Florida was not filed within the time required by Supreme Court Rule 20 nor was the application for an Extension of Time filed within the time required by Supreme Court Rule 29.

The Judgment of the Supreme Court of Florida in favor of the Respondents was entered on January 14, 1982. The Petitioner sought a rehearing which was denied on March 15, 1982 at which date the Mandate was issued. On May 14, 1982, 60 days thereafter, the Petitioner filed a Motion for an Extension of Time to file the Petition for Writ of Certiorari giving as a justification therefor the heavy caseload of the Attorney General's Office. This request for an Extension of Time was untimely filed in that it was not submitted at least 10 days before the specified final filing date. A 30 day extension of time was granted by this Court permitting the Petitioner to file a Petition for Writ of Certiorari on or before June 13, 1982. On June 10, 1982 the Petitioner again filed a Motion for an Extension of Time in which to file its Petition for Writ of Certiorari. This Motion was also untimely and in violation of the Supreme Court Rule 29.2 in that it was not submitted at least 10 days before the specified final filing date. Thereafter the Petition for Writ of Certiorari was filed on June 17, 1982. Said filing was not timely in that it was violative of Supreme Court Rule 20.1 in that the filing occurred more than 90 days after the Order of the Supreme Court of Florida denying the Petitioner's Motion for Rehearing.

For the foregoing reasons, the Petition for Writ of Certiorari herein should be denied.

QUESTION PRESENTED FOR REVIEW

The "Question Presented for Review" by the Petitioner does need correction in that it does not accurately state what the case is about. The Respondents' fishing vessel was stopped by the Florida Marine Patrol for the purposes of inspecting the boat's Registration Certificate. One of the Marine Patrol Officers boarded the vessel and commenced to search it without a search warrant. The Officer proceeded to the forward portion of the vessel and attempted to gain entry into the forward hold. When the Officer was questioned by one of the Respondents as to the legality of the search and refused to permit the Officer to further search the vessel unless the Marine Patrol had a search warrant, the Respondents were told that they were under arrest and that a search warrant was not necessary to search their vessel. The search that followed in the forward hold of the vessel did produce the contraband which was the subject matter of the criminal proceeding. The "Question Presented for Review" would more accurately and appropriately be stated as follows:

> WHEN THE RESPONDENTS, WHO WERE NOT SUSPECTED OF BEING INVOLVED IN ANY ILLEGAL ACTIVITY, WERE STOPPED BY THE FLORIDA MARINE PATROL FOR THE PURPOSES OF INSPECTING THE VESSEL'S REGISTRATION PAPERS AND FOR THE PURPOSES OF SEARCHING THE VESSEL, AND WHERE THE RESPONDENTS WERE NOT FOUND TO HAVE ON BOARD THE APPROPRIATE BOAT REGISTRATION PAPERS, DID THE SUPREME COURT OF FLORIDA CORRECTLY RULE THAT THE WARRANTLESS SEARCH BY THE MARINE PATROL OFFICERS OF THE FORWARD HOLD OF THE VESSEL WAS INVALID?

JURISDICTION

Supreme Court Rule 21.1(h) requires the Petitioner to show that the Federal question being presented to this Court was timely and properly raised so as to give this Court jurisdiction to review the Judgment on Writ of Certiorari. Although that Rule requires pertinent quotations of specific portions of the record, or summaries thereof, with specific references to the places in the record where the matter appears, the Petition for Certiorari is void in this regard. The reason for this is that the specific question being raised by the State was not asserted by the State nor was it asserted by the Respondents before the Supreme Court of the State of Florida. Said Court was the highest Court of the State of Florida and it is the decision of that Court which the Petitioner is seeking to have reviewed. The State's question being addressed to this Court at this time was not addressed by the State to the Supreme Court of Florida until after the Court entered its decision and rendered its opinion affirming the decision of the Third District Court of Appeal. The State raised the question before the Supreme Court of the State of Florida in its Petition for a Rehearing which Petition was denied. (Appendix page 1) The State has therefore not preserved its question as a point for review by this Court.

STATEMENT OF THE CASE

Because of the nature of the question being presented by the State to this Court for review, the Statement of the Case as presented by it is deficient in certain important respects. In addition to that contained in the State's Statement of the Case, it should be noted that:

The vessel containing the contraband was 45-49 feet long. (Appendix page 2) The hold containing the contraband

was located in the forward portion of the vessel. It was covered by a heavy hatch which could not be lifted except by the efforts of two men. This heavy hatch had on top of it fish traps which first had to be removed before the hatch could be lifted. (Appendix page 2, 3, 4, 5, & 6)

The Statement of the case should further contain the finding by the Florida Supreme Court that the Marine Patrol Officers did not have consent or probable cause to conduct a search of the forward hold. (Appendix page 7 & 8)

ARGUMENT

The State is requesting this Court to review on Writ of Certiorari the decision of the Florida Supreme Court for the stated reason that it decided a Federal question in a way in conflict with a Federal Court of Appeals. The State in its Petition for Writ of Certiorari to this Court asserted three reasons why the decision is in conflict:

A. The search was incident to the arrest, and

B. The Carroll Exception, and

C. It was an inspection search.

It is the respondents position that no conflict exists between the decision of the Florida Supreme Court and any Federal Court of Appeals case decision cited by the State. The cases cited by the State are distinguishable and have no application to the case at bar. The Respondents analysis of the asserted conflict will coincide in this brief to the analysis of the State in its Petition for Writ of Certiorari.

A. SEARCH INCIDENT TO ARREST. The State argues in its Petition for Writ of Certiorari that the search was proper as being incident to the arrest and therefor in conflict with Chimel v California, 395 U.S. 752 (1969). An examination of

the facts of that case reveals that it is not in conflict with the decision of the Supreme Court of Florida. Instead it is clearly distinguishable. It also could be used as authority for the proposition that the search was not incident to the arrest. The Chimel case involved a defendant suspected of burglary who was arrested in his home. Without a search warrant the arresting police officers conducted a search of his entire three bedroom home, including the attic, the garage, a small workshop and various drawers in dressers located therein. The Supreme Court suppressed the evidence that was discovered as a result of that search. In doing so it stated that under the "search incident to arrest" principal, when a arrest is made it is reasonable for the arresting officer to search the person arrested in order to remove any weapons which the latter might seek to use in order to resist arrest or effect his escape. It is also reasonable for the arresting officer to search for and seize any evidence on the arrestees person in order to prevent its concealment or destruction. It is furthermore reasonable to search the area into which an arrestee might reach in order to grab a weapon or evidentiary items. The Court went on to say that there is no comparable justification for routinely searching rooms other than that in which an arrest occurs, or for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well recognized exceptions, may be made only under the authority of a search warrant and the adherence to judicial process mandated by the Fourth Amendment requires no less. In the case at bar where the contraband was ultimately found, the hold was in the forward area of the vessel and was secured with a heavy hatch which required two men to lift. On top of this hatch was located fishing traps which also had to be removed in order for entry to be had into the hold. The arrest did not

occur in the hold. It occurred in the cockpit of the fishing vessel which was located in the back of the boat. A search of the cockpit would perhaps have been valid, but surely not a search of the forward hold.

The State then cites the case of New York v Belton, ___ U.S. ____, 101 S. Ct. 2860, 69 L.Ed.2d 768 (1981). The facts of the Belton case were that an automobile was stopped by a police officer because it was traveling at an excessive rate of speed. The police officer upon approaching the automobile smelt burning marijuana and observed what he thought was an envelope of marijuana on the floor of the car. Contemporaneous with the arrest of the occupants of the car, the police officers searched the passenger compartment and found incriminating evidence therein. The Court in ruling that the evidence was admissible stated as follows on page 774 of its opinion:

> "When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his authority. While the Chimel case established that a search incident to an arrest may not stray beyond the area within the immediate control of the arrestee, courts have found no workable definition of "the area within the immediate control of the arrestee" when that area arguably included the interior of an automobile and the arrestee is its recent occupant. Our reading of the cases suggests the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within "the area into which an arrestee might reach in order to grab a weapon or evidentiary item." Chimel, supra, at 763, 23 L Ed 2d 685, 89 S Ct 2034. In order to establish the workable rule this category of cases requires, we read Chimel's definition of the limits of the area that may be searched in light of that generalization. Accordingly, we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile."

As with the Chimel case, the Court in the Belton case felt that the arresting police officer could lawfully search without a warrant the immediate area where the arrestee was located. The policy intended to be promoted by the Court in both of these decisions was the protection of the police officer and the preservation of evidence from destruction by the arrestee. The hold in the front of the fishing vessel covered by a heavy hatch and fishing traps was not in the immediate area of the arrestees. The justification for the warrantless search in the Chimel case and the Belton case did not exist in the case at bar. The Chimel case and the Belton case could be cited as authority for the proposition that the warrantless search by the arresting officers in the case at bar was unlawful because it could not be considered as incident to the arrest.

The State also suggested that the Court consider U.S. v Martinez-Fuerte, 428 U.S. 543 (1976). This case concerned itself with the legality of a search by border patrol agents which search was conducted at a permanent check point. The border patrol agents had statutory authority to search vehicles. No statutory authority existed for the Florida Marine Patrol Officers to search a vessel. The Martinez-Fuerte case is therefor not a conflict decision.

B. CARROLL EXCEPTION. The State in advancing the argument of the Carroll Exception assumes that probable cause existed. In so doing it ignores the fact that both the Third District Court of Appeal and the Supreme Court of the State of Florida found that probable cause did not exist. The facts of the case, summarized in the opinion of the Supreme Court of the State of Florida and adopted by the State in its Petition for Writ of Certiorari, revealed that the Marine Patrol Officers embarked upon a search of the Respondents' fishing vessel the moment they

got on board. They had no suspicion of any kind while they were conducting their search that the Respondents were involved in any form of criminal activity. The Respondents initially consented to the search, but when the Marine Patrol Officer attempted to search the forward hold where the contraband was, the Respondents resisted the Marine Patrol Officers and told them that they would not permit the search in absence of a search warrant. It was only after the Police Officers misrepresented their authority by telling the Respondents that they did not need a search warrant to search the forward hold, that the Respondents acquiesced to the Police Officers misrepresented authority to search and admitted to the presence of contraband in the foward hold. The Carroll v U.S., 267 U.S. 132 (1925), Chambers v Maroni, 399 U.S. 42 (1970) and U.S. v Ross, ____U.S. _____, 31 Cr. L.3051 (1982) cited by the State in its Petition for Writ of Certiorari are not conflict decisions because there was probable cause in those cases to justify the warrantless search. In the case at bar the Marine Patrol Officers conducted their search without any probable cause.

C. INSPECTION SEARCH. In order for the State to advance the administrative inspection theory, it assumes that the stop of the vessel and the search that followed was for the purpose of checking the fishing permits and the safety equipment. The statement of facts contained in the Petition for Certiorari does not say this. The reason it does not is because the vessel was not stopped nor was it searched for those reasons. (Appendix page 9, 10 & 11) Assuming for argument sake that the Marine Patrol Officer was conducting a safety inspection when she was searching the vessel, it must be recognized that the Florida Legislature has by statute prohibited a Florida Marine Patrol Officer from boarding or searching a vessel unless he has

the consent of the owner or operator or probable cause or knowledge to believe that a violation of the safety law has occurred.[1] Even without taking into account said Florida Statute, the cases cited by the State do not constitute a conflict with the decision of the Supreme Court of the State of Florida. Camera v Municipal Court, 387 U.S. 523 (1967) and Frank v Maryland, 359 U.S. 360 (1959) are authority for the State's position that a lesser degree of probable cause is needed to conduct safety inspection searches. It should be noted initially that the Supreme Court of the United States in the Camera case specifically overruled the Frank case. The Camera case concerned itself with a San Francisco housing code which attempted to authorize building inspectors to inspect residences without a warrant. The defendant brought an action for a Writ of Prohibition claiming that the ordinance authorizing such inspections was unconstitutional. The Supreme Court of the United States in its opinion stated in part:

> "In summary, we hold that administrative searches of the kind at issue here are significant intrusions upon the interest protected by the 4th Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the 4th Amendment guarantees to the individual, and that the reasons put forth in Frank v Maryland and in other cases for upholding these warrantless searches are insufficient to justify so substantial a weakening of the 4th Amendment's protections."

[1] 371.58 Safety inspections; qualified. --No officer shall board any vessel to make a safety inspection if the owner or operator is not aboard. When the owner or operator is aboard an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this part has occured or is occurring.

Camera case stands for the proposition that if the Florida Marine Patrol wished to conduct an administrative search of the kind that is an issue here, it would need a search warrant and this would only be issued if there was probable cause. The Camera case is consistent with and does support the decision of the Supreme Court of the State of Florida if one is to mistakenly assume that the Marine Patrol Officers were conducting a safety inspection.

The State then cites Marshall v Barlow's Inc., 436 U.S. 307 (1978) to support its contention that probable cause was not necessary for the Florida Marine Patrol to search the vessel. The Barlow's case involved a business man who refused to permit an inspector from the Occupation Safety and Health Administration to conduct a warrantless search of his business premises which warrantless search was apparently authorized by a statute. The Supreme Court ruled that such an inspection could only be made with a search warrant. The Supreme Court stated in part as follows:

> "The authority to make warrantless searches devolves almost unbridled discretion upon executive and administrative officers, particularly those in the field, as to when to search and whom to search. A warrant, by contrast, would provide assurances from a neutral officer that the inspection is reasonable under the Constitution, is authorized by statute, and is pursuant to an administrative plan containing specific neutrial criteria. Also a warrant would then and there advise the owner of the scope and objects of the search, beyond which limits the inspector is not expected to proceed. These are important functions for a warrant to perform, functions which underly the Court's prior decisions that the warrant clause applys to inspections for compliance with regulatory statutes. Camara v Municipal Court, 387 U.S. 523. We conclude that the concerns expressed by the secretary do not suffice to justify warrantless inspections under O.S.H.A. or vitiate the general constitutional requirement that for a search to be reasonable a warrant must be obtained."

The Barlow's case is not in conflict with the decision of the Supreme Court of the State of Florida. It is consistent with it and could be used as additional authority if one were to again assume that the Marine Patrol Officer was conducting a safety check.

In summary the Camera and the Barlow's case both involved administrative inspections authorized by statute. The Supreme Court in both of those cases held that in order for the inspection to be lawful two things were required:

1. Probable cause must exist that a violation has occurred, and

2. A search warrant must first be obtained by the inspector in order for him to lawfully conduct his inspection. In the case at bar there was neither probable cause nor a search warrant.

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief in Opposition was mailed this 12th day of July, 1982 to the Office of Attorney General, Anthony C. Musto, Assistant Attorney General, 401 N.W. 2nd Avenue, Suite 820 Miami, Fla. 33128.

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ON PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL OF
FLORIDA THIRD DISTRICT

POINTS ON APPEAL

I

WHETHER RESPONDENTS LACKED STANDING TO CHALLENGE THE LEGALITY OF THE SEARCH AND SEIZURE?

II

WHETHER DELAWARE V. PROUSE, 440 U.S. 648, 99 S. Ct. 1391, 59 L.Ed2d 660 (1979) CONCERNS AUTOMOBILES ONLY AND DOES NOT APPLY TO RANDOM STOPS OF VESSELS BY THE FLORIDA MARINE PATROL FOR DOCUMENT AND SAFETY INSPECTIONS?

III

WHETHER DELAWARE V. PROUSE SHOULD BE APPLIED RETROACTIVELY?

IV

WHETHER THE DETENTION AND BOARDING OF THE "SAN RAFAEL" WAS PROPER SINCE SUCH ACTIONS ARE WITHIN THE SCOPE OF A MARINE PATROL OFFICER'S NORMAL PATROL, SURVEILLANCE AND INVESTIGATORY DUTIES?

TRANSCRIPT OF HEARING ON MOTION TO SUPPRESS EVIDENCE AND CONFESSION IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

Page 3 & 4

BY MR. FOWLER:

Q. State your name and occupation, please?

A. Mark Walker, I'm employed with the Florida Marine Patrol.

Q. Were you employed by them on the 18th of September, of last year?

A. Yes, sir, I was.

Q. Did you have occasion on the early morning hours of that date to be on marine patrol?

A. Yes, sir, I was.

Q. What area were you patrolling?

A. I was patrolling from Key West on the ocean side to Munson Island.

Q. Did you have occasion to approach a boat in the early morning hours of the 18th?

A. Yes, sir, the evening of the 17th, I was on patrol, it was the morning of the 18th that I encountered the boat.

Q. Will you describe the boat, please?

A. Yes, sir, it is approximately a 45 foot, 45 or 49 foot commercial type of vessel, it has a wheel house on the back, as we approached and put the light on it, it had a large number of wired traps that are commonly used for fish traps, it had a puller on the side of the boat that is used to pull different types of traps.

TRANSCRIPT OF TESTIMONY OF MARK WALKER AT HEARING ON MOTION TO SUPPRESS EVIDENCE AND CONFESSION IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

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Q. Okay, so now you just told me that when Officer Soli said that she wanted to go up and check the forward part of the boat, right?

A. She asked consent to check the forward hole, yes, sir.

Q. And he said no and wanted to know if you all had a search warrant?

A. Yes, sir.

Q. You then replied to him, after you evaluated the circumstances, you told him that you did not need a search warrant, right?

A. Yes, sir, we were not searching the vessel, I stated that earlier.

Q. But you told him you did not need a search warrant.

A. I stated that earlier, I said...

Q. Just answer my question.

A. I advised him I didn't need a search warrant.

Q. Okay, in reply to my question, you've given us a narrative and now I want to go through with it, okay?

A. All right, sir.

Q. You told him after evaluation that you did not need a search warrant, that you weren't searching the vessel.

A. Right.

Q. Okay, yet Officer Soli had informed him that she wanted to go and check the forward ice hole, right?

A. She asked if she could check the forward ice hole.

Q. She was not given permission to check the forward ice hole.

A. No, sir.

Q. So then you informed him that you did not need a search warrant, did you inform him that you intended to search the vessel any way, that you didn't need a search warrant?

A. My intent wasn't to search the vessel.

Q. Okay, you then placed him under arrest for not having the registration on board, right?

A. Yes, sir.

Q. Subsequently to placing him under arrest for not having a search warrant, did Officer Soli or you communicate your intent to go check the forward ice hole.

THE COURT: He did not arrest him for not having a search warrant.

Q. Excuse me, you arrested him for not having registration on board, right?

A. Yes, sir.

Q. Did you or Officer Soli then communicate your intent to check the forward ice hole of the vessel?

A. No, sir, I didn't, I don't know whether Officer Soli did or not.

Q. Did you make any apparent attempt, or did Officer Soli make an attempt to go check the forward ice hole at that time?

A. She was already standing on the forward part of the boat.

Q. Okay, then subsequently to being arrested is when Mr. Garcia told you that there was no sense checking the forward ice hole because there was grass in it, right? Isn't that what you told me a couple of minutes ago?

A. Wait a minute now, will you rephrase that question, I mean, will you state that question again.

Q. After being arrested, after you told him, 'you're under arrest for not having registration on board, Officer Soli is up in the front on top of the ice hole, isn't that when you told him, isn't that after you told him, 'you're under arrest for not having registration on board, right, and Officer Soli is up there, isn't that when he replied to you, well, there is no sense checking the forward ice hole, because there is marijuana on board?

A. When Officer Soli asked to check the forward hole, Mr. Garcia asked about the search warrant.

Q. It's a real simple question, I want to know if the arrest didn't come before the statement, 'there is no sense checking the forward ice hole, there is marijuana on board', isn't that what you told me about two minutes ago?

A. That the arrest occurred before?

Q. His statement.

A. Yes, sir.

Q. Okay, the arrest happened first, then he came out with his statement.

A. Yes, sir.

Q. And said, 'no sense checking the forward ice hole, there's marijuana in it, right?

A. Yes, sir.

Q. And then you asked him or he acquiesced with your direction to go help Officer Soli lift up whatever covered the forward ice hole, right?

A. After he had been advised of his rights he said again, that there was marijuana on the boat.

Q. Okay, but the first time that he said there was marijuana on the boat was after the arrest and prior to the

warning of rights, right?

A. Yes, sir.

Q. Okay, so he had already been arrested, he told you that and you then formally warned him of his rights and then you asked him again, is there marijuana on board, right?

A. I asked him what was on the boat and he stated, 'marijuana', the first time he said, 'the boat is loaded with grass'.

Q. Okay, and subsequent to all that you then directed, he wasn't free to move, you weren't going to let him take the boat anywhere, were you?

A. Not at that time, no, sir, I was not.

Q. You then, you or Officer Soli through you went ahead and searched the forward hole?

A. With the assistance of the mate and the captain of the vessel, they went up and they moved the fish traps off the top of the ice hole where the hatch was at and they lifted the hatch themselves, like I say, the hatch was too heavy for Officer Soli to lift by herself, I don't know whether I could have lifted it by myself or not.

State v Casal
410 So 2nd 155, 156

We next consider an issue the district court did not need to reach. That is the question whether the marine patrol officers, having lawfully stopped respondents' vessel, had probable cause to search it. As we have held earlier, after the initial stopping and boarding a vessel the marine patrol must have probable cause before conducting any further search or inspection. Tingley v Brown; Hill v State. With respect to safety inspections, the legislature has decided that not even the initial boarding may be conducted without consent or probable cause.[1] 371.58, Fla. Stat. (1977). In this case consent was freely given to board the vessel and to look in the icebox.

However, respondents did not consent to any further search, as was clearly indicated when they asked Officer Soli if she had a search warrant. Villari v State, 372 So. 2d 522 (Fla. 1st DCA 1979). Respondents' subsequently opening the forward hatch for Officer Soli did not constitute consent since they were told that a search warrant was not needed. See Taylor v State, 355 So. 2d 180 (Fla. 3d DCA, cert. denied, 361 So.2d 835 (Fla. 1978).

Without consent, the officers were precluded from further searching the vessel unless they had probable cause to believe that a crime was being or was about to be committed. Tingley v Brown. Probable cause cannot be based on mere suspicion. Bailey v State, 319 So. 2d 22 (Fla. 1975). There must be facts showing a probability of criminal activity. State v Smith, 233 So. 2d. 396, (Fla. 1970). In this case the

[1] 371.58 Safety inspections; qualified. -- No officer shall board any vessel to make a safety inspection if the owner or operator is not aboard. When the owner or operator is aboard an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this part has occurred or is occurring.

facts were insufficient to show that respondents were probably committing or about to commit a crime. That respondents could not produce a registration certificate and that, although they said they were going to the Bahamas, their icebox did not contain ice may have been suspicious circumstances but did not constitute probable cause. That respondents inquired about a search warrant is irrelevant in determining whether the officers had probable cause. Since the officers lacked probable cause, their search of the vessel was unreasonable and the evidence they obtained should have been suppressed.

We disapprove the district court's decision insofar as it held that the initial stop was unreasonable and required probable cause. However, since we hold that the subsequent search was unreasonable because it was not based on probable cause, we approve the district court's reversal of the confiction. In accordance with the mandate of the district court of appeal, this cause is remanded to the circuit court with directions to discharge the defendants.

It is so ordered.

facts were insufficient to show that respondents were probably committing or about to commit a crime. That respondents could not produce a registration certificate and that, although they said they were going to the Bahamas, their icebox did not contain ice may have been suspicious circumstances but did not constitute probable cause. That respondents inquired about a search warrant is irrelevant in determining whether the officers had probable cause. Since the officers lacked probable cause, their search of the vessel was unreasonable and the evidence they obtained should have been suppressed.

We disapprove the district court's decision insofar as it held that the initial stop was unreasonable and required probable cause. However, since we hold that the subsequent search was unreasonable because it was not based on probable cause, we approve the district court's reversal of the confiction. In accordance with the mandate of the district court of appeal, this cause is remanded to the circuit court with directions to discharge the defendants.

It is so ordered.

TRANSCRIPT OF TESTIMONY OF JENNA SOLI
AT HEARING ON MOTION TO SUPPRESS
EVIDENCE AND CONFESSION IN THE CIRCUIT
COURT OF THE 16TH JUDICIAL CIRCUIT IN
AND FOR MONROE COUNTY, FLORIDA

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Q. So, you didn't have any reason to believe that that specific vessel was involved in any trap robbing, right?

A. No.

Q. What was your purpose in going aboard the vessel?

A. I felt that I was doing as a Marine Patrol Office Officer in checking boats that were on the water and the boat couldn't produce the registration and I went aboard the boat for routine safety check.

Q. That's why you went aboard the vessel to perform that routine safety inspection check at midnight, is that why you went aboard this vessel?

A. It doesn't make any difference what time it is.

Q. Okay, I just want to know specifically why you went aboard the San Rafael.

A. In my mind?

Q. Yes.

A. To me, I was just doing my job, I had no suspicions when I went aboard the boat, the gentlemen could not produce the paper, I went on board the boat.

Q. When the gentleman could not produce the registration papers, did you or anyone else place him under arrest at that time?

A. No, sir.

Q. When you went in the wheelhouse, you were looking for what, the papers?

A. I would have helped them look further for papers, we didn't dig in anywhere.

Q. You went aboard but you didn't actually look for any. Did you or any other officer place the gentleman under arrest for any safety violation, any lack of safety equipment?

A. Not as of that point.

Q. At any point, did you?

A. No.

Q. You didn't make any arrest aboard the San Rafael for lack of safety devices.

A. I didn't do a search for safety equipment, I just said I didn't see any in plain view.

Q. Okay, but that was your purpose on going on board, though.

A. There's many reasons why I went on board.

Q. I asked you why you went on board, did you perform a search for safety devices?

A. No, I didn't search for them.

Q. Were you looking for safety devices or documentation papers when you looked in the ice box on the back of the boat?

A. No, sir, I was looking for any kind of seafood products that he might have aboard the boat.

Q. Hadn't the captain told you that there was no such seafood on board?

A. Well, often people do that and we still say we'd like to see your catch.

Q. Okay, is that why you were searching the vessel looking for safety, I mean, looking for seafood products, was that your purpose in searching the vessel?

A. I asked him if I could see.

Q. What was your purpose of searching the vessel?

A. I didn't feel like I was searching, I was doing a routine check.

Q. For what?

A. For any kind of seafood product he might have had on board, in my mind, I was fresh out of school, I was checking the boat and doing my job.

Q. What about when you looked in the grocery box? Were you looking for seafood products or papers then?

A. Not for papers, for seafood products, yes.

Q. Where the groceries were, okay.

A. It was a regular catch box that is why I asked him if I could see it.

RECEIVED
JUL 20 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF FLORIDA,

Petitioner-Appellant

No. 81-2318

vs

CONSTANTINO CASAL and OMAR GARCIA

Respondent-Appellee

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The respondent, CONSTANTINO CASAL, asks leave to file the attached Brief in Opposition without the prepayment of costs and to proceed in forma pauperis. Respondent's affidavit in support of this motion is attached hereto and made a part hereof and marked Exhibit "A".

Constantino Casal
CONSTANTINO CASAL

I HEREBY CERTIFY that a Motion for Leave to Proceed in Forma Pauperis has not been sought in any other Court. I also do hereby certify that a true and correct copy of the Motion For Leave to Proceed in Forma Pauperis and attached Affidavit was mailed this 16th day of July, 1982 to the Office of the Attorney General, Anthony C. Musto, Assistant Attorney General, 401 N.W. 2nd Avenue, Suite 820, Miami, Fla 33128.

ARTHUR F. McCORMICK
Attorney for Respondent
7550 Red Road, Suite 203
South Miami, Fla. 33143
Phone: 305-665-4819

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STATE OF FLORIDA,

Petitioner-Appellant

No. 81-2318

vs

CONSTANTINO CASAL and OMAR GARCIA,

Respondent-Appellee

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The respondent, OMAR GARCIA, asks leave to file the attached Brief in Opposition without prepayment of costs and to proceed in forma pauperis. Respondent's affidavit in support of this motion is attached hereto and made a part hereof and marked Exhibit "A".

OMAR GARCIA

I HEREBY CERTIFY that a Motion for Leave to Proceed in Forma Pauperis has not been sought in any other Court. I also do hereby certify that a true and correct copy of the Motion for Leave to Proceed in Forma Pauperis and attached Affidavit was mailed this 14th day of July, 1982 to the Office of the Attorney General, Anthony C. Musto, Assistant Attorney General, 401 N.W. 2nd Avenue, Suite 920, Miami, Fla. 33128.

ARTHUR F. McCORMICK
Attorney for Respondent
7550 Red Road, Suite 203
South Miami, Fla. 33143
Phone:305-665-4819

EXHIBIT "A"

AFFIDAVIT

I, OMAR GARCIA, being first duly sworn according to law, depose and say that I am the respondent in the above-entitled case; that in support of my motion to proceed without being required to repay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said case or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed?

Answer: No.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other source?

Answer: I am a student and also self employed building lobster traps. I make about $250.00 to $300.00 per month.

3. Do you own any cash or checking or savings account?

Answer: No.

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Answer: I own a 1981 Oldsmobile. It has a present value of approximately $8,000.00, but I owe that much on the automobile.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Answer: None

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Omar Garcia

OMAR GARCIA

EXHIBIT "A"

AFFIDAVIT

I, CONSTANTINO CASAL, being first duly sworn according to law, depose and say that I am the respondent in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said case or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed?

   Answer: Yes, I work as a fisherman for many persons on different boats. I earn approximately $300.00 per month.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other source?

   Answer: No.

3. Do you own any cash or checking or savings account?

   Answer: No

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

   Answer: No

5. List the persons who are dependent upon you for support and state your relationship to those persons.

   Answer: None.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Constantino Casal
CONSTANTINO CASAL

SWORN TO AND SUBSCRIBED to before me this 9th day of July, 1982

Maria Celia G. Casal
Notary Public

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEPT. 10 1983
BONDED THRU GENERAL INS. UNDERWRITERS

SWORN TO AND SUBSCRIBED before me this 8th day of July, 1982.

Notary Public

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEPT. 10 1982
BONDED THRU GENERAL INS. UNDERWRITERS